

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 7, 9-11, 15, 19-21, 23 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (3,897,573) taken with Akesson (4,886,676) in view of Mahon (3,036,923).

Kelly discloses salting fillets of fish and then coating the salted fillets with a binder made of comminuted fish muscle mixed with salt and phosphate and forming a molded, coated fish fillet (see abstract). In example 1 the coated fish is frozen and then smoked at 86F for about 6 hours and then re-frozen. The claims appear to differ from the examples in Kelly in the recitation that the starting material is frozen fish. Kelly teaches that it is known in the art to form uniform fish pieces by molding fish fillets into frozen blocks and then subsequently cutting the blocks into smaller pieces while the fish is frozen. Kelly also discloses that coating the frozen fish acts to hold the individual pieces together. Akesson is further relied

upon to show cutting frozen fish into frozen pieces and using the fish sawdust to coat the surfaces of the frozen fish to hold the fish together (see abstract). Thus Kelly alone or in combination with Akesson teaches treating frozen fish with a binder of fish paste. The claims appear to differ from Kelly in the recitation of the use of phosphate in step a). Mahon teaches the advantages of using sodium and potassium polyphosphates to improve the taste and shelf life of haddock. Table 1 shows the various test solutions. In Table V the salt and phosphate dips are combined. The treatment time is shown at column 3, lines 6-8 to be at 2 minutes. It would have been obvious to one of ordinary skill in the art to utilize the dip of Mahon in place of the salt of Kelly to improve the taste and yield of the Kelly fish products. It is appreciated that the extent of phosphate and salt in the final product are not mentioned but no unobvious or unexpected difference is seen between the salt and phosphate in the fish product of Kelly in view of Mahon and the extent salt and phosphate in the fish of the process of the claims. To the extent that the binder in Kelly and Akesson is based upon fish meat, it is considered to be a surimi-based binder. It is appreciated that the orientation of the seafood portions are not mentioned but no unobvious or unexpected result is seen from this feature. It is also

appreciated that the size and shape of the seafood pieces are not mentioned but to prepare portions of seafood at a consumable size would have been an obvious way to prepare the seafood. It is finally appreciated that the heat treatment time of claim 19 is not mentioned but no unobvious or unexpected result is seen from the extent of treatment in Kelly and that of the claims. It is well known in the art that cooking times may be reduced when cooking temperatures are increased. Kelly provides from varying conditions of smoking the fish at column 1, lines 55-60. To modify the cooking temperatures of Kelly to reduce cooking time would have been well within the determination of one of ordinary skill in the art.

Applicant argues that Kelly uses too much salt and one would not be able to predict the result of the Kelly fish without salt. This has been considered but is not persuasive. Kelly provides for a fish with 1-10 % salt (column 1, line 65), which is in the range of that set forth by the claims.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly as further evidenced by Akesson (4,886,676) in view of Mahon as applied to claims 1, 2, 4-5, 7, 9-11, 15, 19-21, 23 and 27-31 above, and further in view of Chang (4,411,917).

The claim appears to differ from Kelly as further evidenced by Akesson in view of Mahon in the recitation of the use of tetra sodium pyrophosphate in fish. Chang teaches that tetra sodium pyrophosphate is well known in the art as a phosphate source for use in fish. It would have been obvious to one of ordinary skill in the art to use the phosphate of Chang in the fish of Kelly in view of Mahon as an obvious phosphate source.

Applicants arguments are directed to the independent claims and so no arguments need to be addressed herein.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794